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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1286

PITT RIVER TRIBE OF INDIANS,

Petitioner,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent The Hearst Corporation respectfully submits the following brief in opposition to the within Petition for a Writ of Certiorari:

I

STATEMENT OF THE CASE.

The current Complaint herein, the Second Amended Complaint, was filed on behalf of a legally undefined entity, the Pitt River Tribe of Indians, and essentially sought the recovery of vast areas of certain real property located in the State of California, including property to which title has rested in The Hearst Corporation for decades. Other private corporations, also owning real property in the same area, were made parties

to this matter by the filing of substantially identical complaints.

The current pleading against The Hearst Corporation contains fourteen purported causes of action, most of which are based upon a claim that the Pitt River Tribe of Indians retained some right of permanent occupancy in California lands. Petitioner now estimates this to be a total of 3½ million acres, of which at least 500,000 acres are directly involved in this action (Pet., p. 8). Other than the ninth and tenth purported causes of action, petitioner no longer asserts any cause of action not based on an alleged right of occupancy. The ninth cause of action seeks to attack patents on land issued to respondent's predecessors, while the tenth cause of action alleges a right in land "under the principle enunciated in *Cramer v. United States*, 261 U.S. 219."

The trial court ruled on general and special demurrers filed by The Hearst Corporation and the other respondents herein that any right of tribal occupancy had been extinguished by petitioner's failure to comply with the Private Land Claims Act of 1851 (9 Stat. 631) (hereinafter referred to as the "Act of 1851"). The court also ruled that each cause of action was barred by applicable California statutes of limitations, by laches, and by the fact that prior proceedings by the petitioner before the Indian Claims Commission were *res judicata*, thereby preventing recovery herein. The trial court further found that the matters asserted in the current pleading were nonjusticiable, and therefore subject only to legislative action.

On appeal, the California Court of Appeal affirmed, specifically holding that any asserted right to tribal occupancy had been extinguished by petitioner's failure

to comply with the Act of 1851 (Pet. App. C, pp. C-7, 8), and that the petitioner's ninth and tenth causes of action were deficient (Pet. App. C, pp. C-8-13). The California Supreme Court denied petitioner's petition for a hearing by that court.

II
ARGUMENT.

A. Petitioner Has Exhibited No Important Question of Federal Law, as This Court Has Held That Indian Right of Occupancy Has Been Extinguished by Failure to Comply With the Private Land Claims Act of 1851.

The judgment of the California Court of Appeal is properly based upon the law establishing the extinguishment of Indian title claims in California as clearly enunciated by this Court in *Barker v. Harvey*, 181 U.S. 481 (1901), and in *United States v. Title Insurance and Trust Company*, 265 U.S. 472 (1924).

In *Barker v. Harvey*, this Court was presented with a factual situation in which plaintiffs claimed title by virtue of a patent confirmed by the Mexican government. Defendants, so-called "Mission Indians," claimed as a defense a right of permanent occupancy by virtue of alleged occupation of the premises prior to the Mexican grant and before any dominion was acquired by Mexico over the territory.

In discussing the purpose and intent of the Act of 1851, this Court cited with approval the following language in *Thompson v. Los Angeles Farming and Mill Co.*, 180 U.S. 72 (1901):

> "Every question which could arise on the title claimed could come to and receive judgment from this court. The scheme of adjudication was made

complete and all the purposes of an act to give repose to titles were accomplished. And it was certainly the purpose of the act of 1851 to give repose to titles. It was enacted not only to fulfill our treaty obligations to individuals, but to settle and define what portion of the acquired territory was public domain. It not only permitted but required all claims to be presented to the board, and barred all from future assertion which were not presented within two years after the date of the act." 180 U.S. 77.

In rejecting any right to title in the "Mission Indians," this Court in *Barker* stated as follows:

> "If these Indians had any claims founded on the actions of the Mexican government they abandoned them by not presenting them to the commission for consideration, and they could not, therefore, . . . 'resist successfully any action of the government in disposing of the property.' If it be said that the Indians do not claim the fee, but only the right of occupation, and therefore they do not come within the provision of Section 8 as persons 'claiming land in California by virtue of any right or title derived from the Spanish or Mexican government,' it may be replied that a claim of a right to permanent occupancy of land is one of far-reaching effect, and it could not well be said that lands which were burdened with a right of permanent occupancy were a part of the public domain and subject to the full disposal of the United States." 181 U.S. 491.

In *United States v. Title Insurance and Trust Company*, 265 U.S. 472 (1924), this Court was presented

with a suit by the United States as guardian to the "Mission Indians" to quiet in them a "perpetual right" to occupy, use, and enjoy part of a confirmed Mexican land grant in California, for which defendants held a patent from the United States. The Indians never presented a claim pursuant to the Act of 1851 to the Commission, nor did the United States do so for them. The Court discussed at some length its opinion rendered in *Barker*, and noted the following with respect to that decision:

> "This court, after observing that, under the treaty with Mexico and the rules of international law, the United States was bound to respect the rights of private property in the ceded territory, said there could be no doubt of the power of the United States, consistently with such obligation, to provide reasonable means for determining the validity of all titles within the ceded territory, to require all claims to lands therein to be presented for examination, and to declare that all not presented should be regarded as abandoned." 265 U.S. 483.

This Court in *Title Insurance* determined that the decision in *Barker* "has become a rule of property," stating in relevant part as follows:

> "The question whether the decision [*Barker*] shall be followed here or overruled admits of but one answer. The decision was given twenty-three years ago, and affected many tracts of land in California, particularly in the southern part of the state. In the meantime there has been a continuous growth and development in that section, land values have enhanced, and there have been many transfers. Naturally there has been reliance on

the decision. The defendants in this case purchased fifteen years after it was made. It has become a rule of property, and to disturb it now would be fraught with any injurious results. Besides, the government and the scattered Mission Indians have adjusted their situation to it in several instances. As long ago as *Minnesota Min. Co. v. National Min. Co.* 3 Wall. 332, 18 L.ed. 42, this court said (p. 334): 'Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their lives, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective, and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change." 265 U.S. 486.

Similarly, in the case of *Super v. Work*, 3 F.2d 90 (1925), the rights of Indians asserted in that matter differed from those in *Barker, supra*, and *Title Insurance, supra*, "only to the extent that in those cases they were Mission Indians, while in the present case, at and prior to the cession by Mexico, the plaintiff Indians were merely roving bands" (3 F.2d 91). The Court of Appeals in *Super* concluded that the failure of the Indians to present their claims pursuant to the procedure of the Act of 1851 at the proper

time resulted in fatal abandonment of any right in said property, and this Court affirmed *per curiam*, citing both *Barker* and *Title Insurance*.

Accordingly, any question on the subject of extinguishment of Indian title has been decided long ago by this Court and petitioner cannot now ask to disturb the holding of those cases.

B. The Issues Sought to Be Raised by Petitioner Herein Present Political and Nonjusticiable Issues.

The issues sought to be raised by petitioner herein are solely within the jurisdiction and purview of the legislative branch and are not reviewable by the courts.

The issue of aboriginal or Indian title is a question uniquely within the province of Congress and not open to review by the courts. The extinguishment of Indian title has been repeatedly stated to be a political and nonjusticiable issue. The rule was first stated by Chief Justice Marshall in the case of *Johnson v. M'Intosh*, 8 Wheat. 586:

> "The exclusive right of the United States to extinguish Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the rights of occupancy, or otherwise, its justness is not open to inquiry in the courts."

Similarly, this Court in the case of *United States v. Santa Fe Pacific Railroad Company*, 314 U.S. 399 (1941) stated as follows at page 347:

> "Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguish-

ment raise political not justiciable issues (citations omitted)." See also, *Tee-Hit-Ton Indians v. United States,* 348 U.S. 272.

Finally, the court in *Super v. Work, supra,* 3 F.2d 90 (1925), stated as follows:

> "Congress at all times exercises plenary authority over the tribal relations of Indians. The power thus exercised is in its nature political, and not judicial. It has accordingly been held not to be subject to the control of the judicial department of the government. The power of Congress is so absolute that it may abrogate even the provisions of an Indian treaty, which authority arises from its paramount power over the property of Indians by reason of its exercise of guardianship. Congress may in the exercise of this power determine the rights of Indians to the occupancy of lands, and, if injury occurs, the relief must be sought from Congress, and not from the courts. (citation omitted)." 3 F.2d 91.

Accordingly, the issues raised regarding "Indian title", Constitutional violations, and petitioner's request for an "evidentiary hearing" are not capable of judicial remedy, but are rather political questions to be entertained by the legislative branch, if at all.

C. Petitioner Cannot Claim Any Right or Interest in the Subject Real Property Under the Decision in Cramer v. U.S.

Petitioner has contended throughout the appellate proceedings, and in its petition herein, that the decision in *Cramer v. U.S.* (1923) 261 U.S. 219, affords some basis of relief. Such an interpretation of *Cramer* is

a total misapplication of the case, as there is no similarity whatsoever between the allegations contained in Petitioner's Second Amended Complaint and the facts upon which the *Cramer* decision is based.

Specifically, *Cramer* was a suit originally brought by the United States Government, acting in behalf of certain Northern California Indians, to cancel a land patent issued to defendants' predecessor. The patent was issued in 1866, but it excepted from the grant such land as "shall be found to have been granted, sold, reserved, occupied by homestead settlers, preempted or otherwise disposed of." The Indians were found to have occupied the land in question continuously since before 1859. They had fenced 150-175 acres, a portion of which was irrigated and cultivated. In addition, they had constructed dwellings on the land.

This Court in *Cramer* allowed these individual Indians to retain possession of public lands against the claimants on the basis of the foregoing facts, as well as a conclusion that the Act of 1851 did not bar those particular Indians' rights because their claims were not derived from the Spanish or Mexican Governments and "moreover it does not appear that these Indians were occupying the lands in question when the Act was passed." (261 U.S. at 231). Their occupation of the land was in the nature of homesteading, but because the homestead privilege was not extended to Indians until the Act of March 3, 1875 and the Indians in *Cramer* settled on the land in about 1859, this Court based its findings on a basic federal policy to respect the Indian right of occupancy, and stated as follows:

> "The action of these individual Indians in abandoning their nomadic habits and attaching them-

selves to a definite locality, reclaiming, cultivating, and improving the soil and establishing fixed homes thereon, was in harmony with the well-understood desire of the government which we have mentioned. To hold that, by so doing, they acquired no possessory rights to which the government would accord protection, would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation" 261 U.S. 228-229.

This Court held that the Indians had a right only to the land which was actually enclosed, and that this right did not extend beyond the limits of actual occupancy. Such a decision, and the basis on which the decision rests as discussed above, gives no support whatsoever to any claim of a right to the property which is the subject of this lawsuit by petitioner.

In this action, the United States is not a party, petitioner did reside on the land they now seek at the time of the Act of 1851, and that Act did apply to petitioner. In this action, there was no allegation of facts establishing a right similar to that of homesteading in that petitioner did not allege ownership, occupancy, or a description of specific property which it claims, did not allege fencing of any particular area, or that there was any cultivation or irrigation of the property, or that dwellings were placed upon the property. It should furthermore be noted that in *Cramer* this Court only allowed a right of occupancy as to that portion of the property which was continuously, openly and observably possessed by the Indians subsequent to the Act of 1851. It is clear that the *Cramer* decision is no support for any right or interest asserted by petitioner in this action.

The operative allegations of petitioner's tenth cause of action regarding the so-called "Cramer theory" merely alleges that,

> "After March 3, 1853, while Pitt River land was part of the public domain plaintiff occupied it and acquired title under principle enunciated in *Cramer v. United States*, 261 U.S. 219." (Pet. App. A, pp. A-7, 8).

Under California law, Petitioner is presumed to have pleaded its strongest possible case (*Sierra Investment Corp. v. County of Sacramento* (1967) 252 Cal. App. 2d 339, 341), and it is submitted that the California Court of Appeal was clearly correct in finding this allegation to be insufficient as a mere conclusion of law (Pet. App. C, p. C-12).

D. Petitioner Has No Standing to Attack Patents Issued to Respondent's Predecessors.

In its purported ninth cause of action, petitioner sought to challenge patents issued to respondent's predecessors. It is established that, even if there may have been error in the issuance of a patent, a stranger with no interest in the land cannot maintain an action to challenge the patent (*Burke v. Southern Pacific R.R. Co.* (1913) 234 U.S. 669, 692-693; *Lee v. Johnson* (1885) 116 U.S. 48, 49-50; *Bohall v. Dilla* (1884) 114 U.S. 47, 50-51). Petitioner did not allege title to, ownership of, or any other right in the land prior to the issuance of the patents which it sought to challenge. Regardless, in view of the decisions of this Court discussed above, it could not have done so. Accordingly, it had no standing to challenge the patents, and none of the cases cited by petitioner is to the contrary.

Conclusion.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Dated: April 19, 1976.

Respectfully submitted,

PHILIP M. BATTAGLIA,
Attorney for Respondent
The Hearst Corporation.

FLINT & MACKAY,
Of Counsel.

APPENDIX.

Act of June 2, 1862, Chap. 94.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands belonging to the United States to which the Indian title has been or shall be extinguished shall be subject to the operations of the preemption act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: Provided, however, That when unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto, provided said notices may be filed with the Surveyor General, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose."

Indians of California
25 U.S.C.

§ 651. Definitions

For the purposes of sections 651-657 of this title the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State. May 18, 1928, c. 624, § 1, 45 Stat. 602.

§ 652. Claims against United States for appropriated lands; submission to Court of Claims; appeal; grounds for relief

All claims of whatsoever nature the Indians of California as defined in section 651 of this title may have against the United States by reason of lands taken from them in the State of California by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State which the United States appropriated to its own purposes without the consent of said Indians, may be submitted to the Court of Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is conferred upon the Court of Claims of the United States, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

It is declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief. May 18, 1928, c. 624, § 2, 45 Stat. 602.

§ 653. Statutes of limitations unavailable against claims; amount of decree; set-off

If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been

presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided*, That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at $1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off. May 18, 1928, c. 624, § 3, 45 Stat. 602.

§ 658. Distribution of $150 from fund to each enrolled Indian

Notwithstanding the provisions of section 656 of this title, the Secretary of the Interior, under such regulations as he may prescribe, is hereby authorized and directed to distribute per capita the sum of $150 to each Indian of California living on May 24, 1950, who is now or may hereafter be enrolled under sections 651 and 657 of this title. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on the roll of the Indians of California approved on May 16, 1933, as he identifies such enrollees, before the completion of the revised

roll provided for in section 651 of this title. The Secretary of the Interior is authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the per capita payments required by this section, including not to exceed $15,000 for the purpose of defraying the expenses incident to carrying out the provisions of sections 657 and 658 of this title. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any of such persons, except for debts owing to the United States. May 24, 1950, c. 196, § 2, 64 Stat. 190.

§ 659. Distribution of judgment fund; preparation of Indian roll; applications for inclusion

(a) The Secretary of the Interior shall prepare a roll of persons of Indian blood who apply for inclusion thereon and (i) whose names or the name of a lineal or collateral relative appears on any of the approved rolls heretofore prepared pursuant to sections 651-657 of this title and the amendments thereto or (ii) who can establish, to the satisfaction of the Secretary, lineal or collateral relationship to an Indian who resided in California on June 1, 1852, and (iii) who were born on or before and were living on September 21, 1968.

(b) The roll so prepared shall indicate, as nearly as possible, the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852. If the affiliation of an enrollee's ancestors on that date is unknown, it shall be presumed to be the same as that of the ancestors' relatives whose affiliation is known unless there is sound reason to believe otherwise. Applicants whose ancestry is derived partly from one of the grounds named in section 660(b) of this title and partly from another group of Indians in California shall elect the affiliation to be shown for them on the roll.

(c) Application for enrollment shall be filed with the Area Director of the Bureau of Indian Affairs, Sacramento, California, on forms prescribed for that purpose. Pub.L. 90-507, § 1, Sept. 21, 1968, 82 Stat. 860.

§ 660. Equal share distribution of 1964 appropriation

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title, except those whose ancestry is derived from one or more of the groups named in subsection (b) of this section, an equal share of the moneys which were appropriated by the Act of October 7, 1964 (78 Stat. 1033), in satisfaction of the judgment of the Indian Claims Commission in consolidated dockets numbered 31, 37, 80, 80-D, and 347, plus the interest earned thereon, minus attorneys fees, litigation expenses (including the reimbursement of funds expended under authority of the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512)), a

proper share of the costs of roll preparation, and such amounts as may be required to effect the distribution

(b) Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share, other than as heirs or legatees of enrollees, in any award granted to any of the following groups shall not share in the funds distributed pursuant to subsection (a) of this section: Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes. Pub. L. 90-507, § 2, Sept. 21, 1968, 82 Stat. 860.

§ 661. Equal share distribution of undistributed balance of 1945 appropriation; credit to judgment account

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title regardless of group affiliation an equal share of the undistributed balance of the moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), plus the interest earned thereon, including the reimbursed moneys and unexpended balances of the funds established by the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), minus a proper share of the costs of roll preparation

and such amounts as may be necessary to effect the distribution.

(b) The Secretary of the Treasury is authorized and directed to credit to the judgment account referred to in subsection (a) of this section, for distribution as a part of such account, the sum of $83,275, plus interest at 4 per centum per annum from December 4, 1944, which sum represents the value of sixty-six thousand six hundred and twenty acres of land erroneously used as an offset against said judgment.